

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 05-10280

DOUGLAS ALAN BREINER

Debtor

DOUGLAS ALAN BREINER

Plaintiff

vs.

UNITED STATES DEPARTMENT OF
EDUCATION

Defendant

PROC. NO. 05-1025

DECISION AND ORDER ON MOTION TO DISMISS

At Fort Wayne, Indiana, on May 20, 2005

The debtor filed this adversary proceeding in order to determine the dischargeability of student loans. The defendant responded by filing a motion asking the court to dismiss both the adversary proceeding and the underlying bankruptcy case, alleging improper venue. It is that motion which is presently before the court.

Venue in bankruptcy matters is governed by §§ 1408-1412 of title 28. 28 U.S.C. §§ 1408-1412. The provisions relevant to this matter are § 1408 and § 1409. Section 1408 specifies the requirements for the proper venue of the bankruptcy case itself. 11 U.S.C. § 1408. See also, Norton Bankruptcy Law & Practice 2d § 6:1. Section 1409 does the same thing for the adversary proceedings filed in connection with a particular bankruptcy case. See, Norton Bankruptcy Law & Practice 2d § 6:2. Those proceedings, such as this one to determine the dischargeability of a debtor's

obligations to a creditor, “may be commenced in the district court¹ in which [the bankruptcy] case is pending.” 28 U.S.C. § 1409(a).

The substance of defendant’s argument is that the debtor is not a resident or domiciliary of Fort Wayne, but of Pendleton, in the Southern District of Indiana, where he is presently incarcerated, and thus his case should be dismissed or transferred to that district. Those perceptions may or may not be correct. The court does not need to consider the issue. The defendant’s arguments all are addressed to the propriety of venue under § 1408 and the dismissal or transfer of cases via Rule 1014(a)(2) of the Federal Rules of Bankruptcy Procedure. Yet, § 1408 and Rule 1014(a)(2) apply only to the underlying bankruptcy case – the case that is commenced with a petition for relief under title 11 – they do not apply to the proceedings within it. In re Geauga Trenching Corp., 110 B.R. 638, 651 fn. 11 (Bankr. E.D. N.Y. 1990). Venue for those proceedings is the subject of § 1409.

When the debtor filed this adversary proceeding, he did so in the proper place – where his underlying bankruptcy case was pending: the Northern District of Indiana. 11 U.S.C. § 1409(a). It appears that what the defendant is really trying to do is dismiss the underlying bankruptcy case or have it transferred to the Southern District of Indiana. While improper venue is, admittedly, a basis for dismissing or transferring a bankruptcy case, see Fed R. Bankr. P. Rule 1014(a)(2), doing so requires a motion and that motion should be filed in the precise case that one contends has been improperly venued; not in some other proceeding connected to the improperly venued case.

Some might feel that the court is being overly fastidious in its adherence to procedural formalities. After all, whether the motion is filed in the main bankruptcy case or in the adversary proceeding will not change the arguments concerning debtor’s residence or domicile, or facts upon

¹Pursuant to 28 U.S.C. § 151, the bankruptcy court is a unit of the district court.

which those arguments are based. Yet, there is more to the court's preference for doing things properly than just observing the rules for their own sake – although that is also a sufficient reason for doing so. All creditors and parties in interest are entitled to notice of the hearing on the dismissal of the case, Fed. R. Bankr P. Rule 2002(a)(4), and the local rules of this court contemplate that all creditors will be given notice of a motion to transfer a case and the opportunity to object thereto. N.D. Ind. L.B.R. B-2002-2(a)(14). The only parties to this adversary proceeding, and the only ones who know about the defendant's complaints concerning improper venue, are the debtor and the defendant. Neither the trustee, the United States Trustee, nor any of the other creditors know anything about the defendant's request for the dismissal or transfer of the debtor's bankruptcy case and none of them have had the opportunity given by the applicable rules of procedure to comment on the merits or the outcome of that motion.

A party cannot seek to eliminate one case by filing a motion to dismiss in another. That is essentially what the defendant is attempting to do. This adversary proceeding was filed in the proper place – where the debtor's bankruptcy case was pending. Defendant's motion to dismiss is, therefore, DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court